

Message Text

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C O N F I D E N T I A L SECTION 1 OF 3 USBERLIN 0551

E.O. 11652: GDS
TAGS: PGOV, BQG, AKB
SUBJECT: SOVIET DEMARCHE ON EXTENSION OF FRG LAWS & TREATIES TO
BERLIN

REF: (A) BONN 1551, (B) BONN 203, (C) 77 BONN 18977,
(D) 77 BONN 18135, (E) 77 USBERLIN 2575

SUMMARY: ON 6 MARCH SOVIETS CALLED ON CHAIRMAN POLAD TO
PRESENT SEVERAL PROTESTS. MOST LENGTHY PROTEST DEALT WITH
FIVE SPECIFIC CASES IN WHICH SOVIETS ALLEGED EXTENSION OF
FRG LAWS, TREATIES OR REGULATIONS TO BERLIN CONSTITUTED
VIOLATION OF QUADRIPARTITE AGREEMENT OF 1971. AT FIRST
BLUSH, FIVE ITEMS APPEAR TO US TO BE RELATIVELY INNOCUOUS -
OR PREVIOUSLY DISCUSSED WITH SOVIETS. SOVIET COMPLAINT SEEMS
TO BE A GENERAL ATTACK ON MANTELGESETZ PROCEDURE RATHER
THAN SERIOUS CRITICISM OF SPECIFIC ITEMS. END SUMMARY

1. ON 6 MARCH SOVIET EMBASSY MINISTER, KHOTULEV, CALLED ON
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CHAIRMAN (FRENCH) POLAD, PERRIN, TO GIVE LENGTHY PROTEST ON
SEVERAL MATTERS. HEART OF SOVIET PROTEST DEALT WITH
EXTENSIONS TO BERLIN OF CERTAIN PAST OR CONTEMPLATED
FRG TREATIES, LEGISLATION AND REGULATIONS WHICH SOVIETS
REGARD AS VIOLATIVE OF QUADRIPARTITE AGREEMENT OF 3
SEPTEMBER 1971 AND ALLIED RIGHTS AND RESPONSIBILITIES
IN WESTERN SECTORS OF BERLIN. (OTHER MATTERS RAISED

BY KHOTULEV REPORTED SEPTTEL).

2. PERRIN RESPONDED THAT KHOTULEV'S LONG AND DETAILED DECLARATION WOULD CERTAINLY RECEIVE AN ATTENTIVE EXAMINATION. HE ADDED THAT TO THE EXTENT THAT THE SOVIET DEMARCHE WAS A GENERAL CRITIQUE OF THE MANNER IN WHICH THE ALLIES ASSURE THE CONTROL OF LEGISLATION APPLICABLE IN THE WESTERN SECTORS OF BERLIN, IT WAS HIS BELIEF THAT A PRIORI IT WOULD BE DIFFICULT FOR THE ALLIES TO SUBSCRIBE TO THE SOVIET VIEWS. HE STATED THAT THE ALLIES FULLY OBSERVE THEIR OBLIGATIONS IN THE WESTERN SECTORS OF BERLIN. KHOTULEV STATED THAT, IN HIS PERSONAL OPINION, HIS AUTHORITIES WERE NOT CRITICIZING THE SYSTEM OR THE ALLIES, BUT WERE CRITICIZING THE INTERFERENCE OF THE FRG IN BERLIN.

3. SOVIETS MENTIONED FIVE SPECIFIC ITEMS. BERLIN MISSIONS WILL HAVE TO RESEARCH MATTER IN ORDER TO DETERMINE PRECISE MANNER (E.G. WHETHER WITH OR WITHOUT EXPRESS ALLIED RESERVATIONS) IN WHICH ITEMS WERE EXTENDED (OR WILL BE EXTENDED) TO BERLIN. NONETHELESS, IT IS FAIRLY APPARENT AT THIS STAGE THAT SOVIETS ARE STRAINING AT THE LEASH IN THEIR EFFORTS TO UNCOVER SPECIFIC ISSUES TO COMPLAIN ABOUT. OUR PRELIMINARY ESTIMATE IS THAT THE FIVE PIECES OF LAW, TREATY CONFIDENTIAL

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OR REGULATION THAT THE SOVIETS HAVE CHOSEN TO COMPLAIN ABOUT ARE IN GENERAL SUFFICIENTLY INNOCUOUS THAT DESPITE KHOTULEV ASSURANCES, WE SHOULD REGARD SOVIET COMPLAINT LESS AS AN ATTACK ON THOSE SPECIFIC ITEMS, THAN AS GENERAL ATTACK ON THE SYSTEM WHICH WE TERM THE MANTELGESETZ PROCEDURE BY WHICH FEDERAL LAW IS EXTENDED TO BERLIN AFTER REVIEW BY THE ALLIES. IF THIS ESTIMATE IS CORRECT, THEN SOVIETS ARE CHALLENGING PERHAPS THE MOST FUNDAMENTAL ASPECT OF THE MAINTENANCE OF TIES BETWEEN BERLIN AND THE BUND.

4. IT SHOULD BE NOTED THAT ONE OF FIVE ITEMS SOVIETS HAVE RAISED (SEE POINT 5 OF TEXT FOLLOWING) APPEARS TO BE THE KONTAKTSPERREGESETZ WHICH THEY HAVE ALREADY RAISED (REFTEL E) AND FOR WHICH THEY HAVE ALREADY RECEIVED AN ANSWER (REFTEL A). NONETHELESS, THEY REPEAT THE ARGUMENT THAT THE LAW DEALS WITH MATTERS OF SECURITY AND IS THEREFORE ILLEGAL. ON THIS ISSUE, ADDRESSEES SHOULD RECALL BONN GROUP COLLOQUY REPORTED IN REFTELS A THRU D IN WHICH QUESTION OF EXTENSION TO BERLIN OF FRG LEGISLATION

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DEALING WITH SECURITY WAS ADDRESSED.

5. BERLIN MISSIONS WILL RESEARCH POINTS RAISED IN
SOVIET COMPLAINT AND PREPARE RECOMMENDED REPLY FOR BONN
GROUP REVIEW.

6. FOLLOWING IS TEXT OF MAIN KHOTULEV DEMARCHE DELIVERED
TO CHAIRMAN (FRENCH) POLAD ON 6 MARCH:

BEGIN TEXT

KHOTULEV DEMARCHE DELIVERED TO CHAIRMAN (FRENCH)

POLAD ON 6 MARCH (INFORMAL TRANSLATION FROM FRENCH:
RUSSIAN TEXT NOT YET AVAILABLE).

AS THE SOVIET EMBASSY HAS LEARNED, THE AUTHORITIES
OF THE FEDERAL REPUBLIC OF GERMANY HAVE EXTENDED IN
THE RECENT PAST OR PLAN THE EXTENSION OF A SERIES OF
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FEDERAL LAWS WHOSE PROVISIONS TREAT QUESTIONS OF SECURITY AND STATUS OF THE WESTERN SECTORS OF BERLIN AND, AS A CONSEQUENCE, DO NOT CORRESPOND TO THE CONDITIONS ESTABLISHED BY THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971. IN PARTICULAR, WE CONSIDER IT NECESSARY TO DRAW YOUR ATTENTION TO THE FOLLOWING POINTS:

1. IN THE FEDERAL LAW ON THE CENSUS OF THE POPULATION IT IS PLANNED THAT, AS WITH ALL OF THE LAENDER OF THE FEDERAL REPUBLIC OF GERMANY, THE APPROPRIATE AUTHORITIES OF WEST BERLIN WILL BE CHARGED TO GATHER AND ASSEMBLE INFORMATION CONCERNING ALL OF THE INHABITANTS OF WEST BERLIN. THIS BEING DONE, THE FEDERAL GOVERNMENT, AS WELL AS THE MINISTER OF THE INTERIOR OF THE FEDERAL REPUBLIC OF GERMANY, WILL HAVE FULL POWER TO EXERCISE BY THEIR OWN AUTHORITY, WITH THE AGREEMENT OF THE BUNDESRAT, MEASURES OF ADDITIONAL CONTROL OVER THE POPULATION WITHIN THE SPHERE OF APPLICATION OF THE LAW IN QUESTION.

THE EXTENSION TO WEST BERLIN OF THESE LEGAL PROVISIONS OR OF SIMILAR PROVISIONS ENACTED BY THE FEDERAL REPUBLIC OF GERMANY CAN ONLY BE CONSIDERED AS A MANIFESTATION OF THE EFFORTS OF GOVERNMENTAL ORGANS OF THE FEDERAL REPUBLIC OF GERMANY TO ATTEMPT TO EXERCISE A DIRECT STATE COMPETENCE OVER THE WESTERN SECTORS OF BERLIN - WHICH IS IN CONTRADICTION WITH THE QUADRIPARTITE AGREEMENT, AND IN A MORE PRECISE MANNER, IN CONTRADICTION WITH THE PROVISIONS OF ANNEX II (PARAGRAPHS 1 & 2) OF THE QUADRIPARTITE AGREEMENT AND WITH THE LETTER ADDRESSED BY THE THREE AMBASSADORS TO THE FEDERAL CHANCELLOR (POINT A). WITH RESPECT TO PARACONFIDENTIAL

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GRAPH 7 OF THE LAW IN QUESTION, WE DRAW YOUR ATTENTION TO THE FACT THAT THE FEDERAL REPUBLIC OF GERMANY DOES NOT HAVE THE RIGHT TO REGULATE IN ANY MANNER QUESTIONS CONCERNING MEMBERS OF THE FOREIGN DIPLOMATIC MISSIONS OR OF FOREIGN CONSULAR REPRESENTATION IN WEST BERLIN.

2. BY THE FEDERAL LAW ON THE APPLICATION OF THE HAGUE CONVENTION OF 15 NOVEMBER 1965 RELATIVE TO THE TRANSMISSION OF JUDICIAL AND NON-JUDICIAL DOCUMENTS CONCERNING CIVIL AND COMMERCIAL TRANSACTIONS, THE AUTHORITIES OF THE FEDERAL REPUBLIC OF GERMANY ATTEMPT TO INCLUDE WEST BERLIN WITHIN THE JURISDICTION OF THE FEDERAL REPUBLIC OF GERMANY AND AT THE SAME TIME TO AFFIRM EN BLOC ITS PRETENSIONS TO UNIVERSAL REPRESENTATION OF WEST BERLIN IN INTERNATIONAL AFFAIRS.

IT SHOULD BE RECALLED THAT, IN CONFORMITY WITH THE DISPOSITIONS OF THE QUADRIPARTITE AGREEMENT (ANNEX IV A), THE GOVERNMENTS OF FRANCE, GREAT BRITAIN, AND THE UNITED STATES MAINTAIN THEIR RIGHTS & RESPONSIBILITIES RELATIVE TO THE FOREIGN REPRESENTATION OF THE INTERESTS OF THE WESTERN SECTORS OF BERLIN AND THAT THE INTERNATIONAL AGREEMENTS AND CONVENTIONS ENTERED INTO BY THE FEDERAL REPUBLIC OF GERMANY CAN ONLY BE EXTENDED TO WEST BERLIN TO THE EXTENT THAT THEY DO NOT INFRINGE UPON THE PRECEDING. ADDITIONALLY, IN THIS CASE THE INTENTIONS OF THE AUTHORITIES OF THE FEDERAL REPUBLIC OF GERMANY, AS CAN BE SEEN IN PARAGRAPH 2, 6 AND 15, TO REGULATE THE AFFAIRS HAVING AN EFFECT ON DIPLOMATIC OR CONSULAR REPRESENTATIONS IN WEST BERLIN ARE ILLEGAL.

3. THE ORDINANCE ON THE EXEMPTION OF HOLDERS OF PAKISTANI SERVICE PASSPORTS FROM OBTAINING A RESIDENCE

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PERMIT IN THE FEDERAL REPUBLIC OF GERMANY IS EQUALLY AN INADMISSIBLE EXTENSION TO WEST BERLIN OF THE SUPREME POWERS OF THE FEDERAL REPUBLIC OF GERMANY THE MORE SO BECAUSE UNDER THE ORDINANCE THE FEDERAL MINISTER OF THE INTERIOR HAS THE COMPETENCE OF HIS OWN AUTHORITY TO OVERRIDE AN OBLIGATION TO AUTHORIZE A STAY IN WEST

BERLIN. IN THIS REGARD, THERE IS NEED ONCE AGAIN TO DRAW YOUR ATTENTION TO THE FACT THAT THE GOVERNMENTAL ORGANS OF THE FEDERAL REPUBLIC OF GERMANY CANNOT PERFORM OFFICIAL ACTS IN REPEAT IN THE WESTERN SECTORS OF BERLIN WITHOUT EXERCISING DIRECT STATE AUTHORITY.

4. THE EXTENSION TO WEST BERLIN OF THE LAW ON RATIFICATION OF THE INTERNATIONAL CONVENTION OF 23 SEPTEMBER 1971 FOR THE COMBAT OF ILLEGAL ACTS DIRECTED AGAINST THE SECURITY OF CIVIL AVIATION IS ABSOLUTELY INADMISSIBLE. ONE KNOWS QUITE WELL THAT THE FEDERAL REPUBLIC OF GERMANY DOES NOT NOR CAN IT HAVE RIGHTS AND COMPETENCES IN WEST BERLIN AIR MATTERS WHICH ARE CONFIDENTIAL

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GOVERNED BY VERY PARTICULAR PROVISIONS.

5. THE LAW RECENTLY ADOPTED BY THE BUNDESTAG OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING A MODIFICATION OF THE FEDERAL PENAL CODE (THE LAW WHICH IS COMMONLY CALLED THE ANTI-TERRORIST LAW) TOUCHES, FROM BEGINNING TO END, ON QUESTIONS OF INTERNAL SECURITY AND, FROM THIS SIMPLE FACT, THE EXTENSION OF THIS LAW TO WEST BERLIN IS A GROSS VIOLATION OF THE PROVISIONS OF THE QUADRIpartite AGREEMENT AND IS INCOMPATIBLE WITH THE PRINCIPLE OF THE SAID AGREEMENT ACCORDING TO WHICH THE WESTERN SECTORS OF BERLIN CONTINUE NOT TO BE A CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND CONTINUE NOT TO BE GOVERNED BY IT. THIS LAW CONSTITUTES IN ITSELF A FLAGRANT ATTEMPT TO CONFIRM THE VALIDITY OF THE PROVISIONS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF GERMANY IN THE WESTERN SECTORS OF BERLIN (SEE ARTICLE 4 OF THE LAW). THIS IS IN CONTRADICTION BOTH WITH THE DECISIONS OF THE MILITARY ADMINISTRATION (OF BERLIN) AND WITH THE PROVISIONS OF THE QUADRIpartite AGREEMENT. THE SOVIET SIDE HAS, ON SEVERAL OCCASIONS IN THE PAST, AND IN AN UNEQUIVOCAL MANNER, DRAWN THE ATTENTION OF THE THREE POWERS TO ATTEMPTS TO EXTEND TO BERLIN LAWS OF THE FEDERAL REPUBLIC OF GERMANY WHOSE PROVISIONS ARE IN GROSS CONTRADICTION WITH THE CONDITIONS ESTABLISHED BY THE QUADRIpartite AGREEMENT. IN THIS REGARD, THE EMBASSY REFERS IN PARTICULAR TO THE MEMORANDUM ADDRESSED BY THE FOREIGN MINISTER OF THE USSR TO THE EMBASSIES OF THE USA, FRANCE AND GREAT BRITAIN IN MOSCOW, 23 JULY 1973. NOTING THAT THE FEDERAL LAWS AND ORDINANCES MENTIONED ABOVE ARE IN CONTRADICTION WITH THE PROVISIONS OF THE QUADRIpartite

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AGREEMENT, THE EMBASSY OBSERVES THAT IT IS ABSOLUTELY
EVIDENT THAT THEY CANNOT HAVE EFFECT OR APPLICATION IN
THE WESTERN SECTORS OF BERLIN. END TEXT.GEORGE

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